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OF THE COURT, BUT IS INTENDED
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

JOSEPH MARTIN POE, SR.,

Defendant-Appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent. Lori A. Fleming argued.

On September 7, 1999, the defendant-appellant Joseph Poe was charged with disturbing the peace in violation of Idaho Code § 18-6409 based upon statements he made to a thirteen-year-old boy who had come with his mother to Poe's home to pick up another child. Idaho Code § 18-6409 makes it a misdemeanor for anyone who "uses any vulgar, profane or indecent language within the presence or hearing of children, in a loud and boisterous manner." The jury found Poe guilty, and the district court upheld his conviction on appeal. He then appealed to this

Court challenging his conviction on the ground that Idaho Code § 18-6409 was unconstitutionally overbroad.

In a majority opinion, the Idaho Supreme Court held that the portion of Idaho Code § 18-6409 criminalizing the use of vulgar, profane or indecent language within the presence or hearing of children, in a loud and boisterous manner was unconstitutional because it criminalized speech protected by the First Amendment. The Court however affirmed the magistrate court's judgment because Poe failed to argue that the statute was unconstitutional as applied to him.